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Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,

Plaintiff,

v.

HARBOR FREIGHT TOOLS USA, INC., a  
corporation, and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO. 19STCV12699

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Mel Red Recana

Dept.: 45

Compl. Filed: April 11, 2019

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and  
4 between APS&EE, LLC (“APS&EE”) and Harbor Freight Tools USA, Inc. (“Harbor Freight”).  
5 APS&EE and Harbor Freight shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** APS&EE is an organization based in California with an interest in  
7 protecting the environment, improving human health and the health of ecosystems, and  
8 supporting environmentally sound practices, which includes promoting awareness of exposure to  
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Harbor Freight is a person in the course of doing business as the term is  
11 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

12 **1.2 Allegations**

13 **1.2.1** APS&EE alleges that Harbor Freight sold rain suits, including Western  
14 Safety yellow rain suit, 7-92363-62262-2, Item 62262 (hereinafter collectively the “Products”) in  
15 the State of California causing users in California to be exposed to hazardous levels of Di (2-  
16 ethylhexyl) Phthalate (“DEHP”), without providing “clear and reasonable warnings”, in violation  
17 of Proposition 65. DEHP is potentially subject to Proposition 65 warning requirements because it  
18 is listed as known to cause cancer and reproductive toxicity.

19 **1.2.2** On December 23, 2018, APS&EE sent a Sixty-Day Notice of Violation  
20 (the “Notice”) to Harbor Freight and the various public enforcement agencies regarding the  
21 alleged violation of Proposition 65 with respect to the Products. Acting in the public interest,  
22 Plaintiff subsequently filed the instant action (the “Complaint”) in the Superior Court for the  
23 County of Los Angeles, alleging violations of Proposition 65.

24 **1.3 No Admissions**

25 Harbor Freight denies all allegations in APS&EE’s Notice and Complaint and maintains  
26 that the Products have been, and are, in compliance with all laws, and that Harbor Freight has not  
27 violated Proposition 65. This Consent Judgment shall not be construed as an admission of  
28 liability by Harbor Freight but to the contrary as a compromise of claims that are expressly

1 contested and denied. However, nothing in this section shall affect the Parties' obligations,  
2 duties, and responsibilities under this Consent Judgment.

#### 3 **1.4 Compromise**

4 The Parties enter into this Consent Judgment in order to resolve the controversy  
5 described above in a manner consistent with prior Proposition 65 settlements and consent  
6 judgments that were entered in the public interest and to avoid prolonged and costly litigation  
7 between them.

#### 8 **1.5 Effective Date**

9 The "Effective Date" shall be the date on which counsel for both parties have received  
10 notice that this Consent Judgment was approved and entered by the Court.

### 11 **2. INJUNCTIVE RELIEF**

#### 12 **2.1 Reformulation Standard**

13 After the Effective Date, Harbor Freight shall not distribute for sale in California, sell or  
14 offer for sale the Products in California unless (a) the Product contains no more than 1,000 parts  
15 per million (0.1%) of DEHP ("Reformulated Product"), or (b) the Product is distributed, sold, or  
16 offered for sale with a clear and reasonable warning as described below in Section 2.2.

#### 17 **2.2 Proposition 65 Warnings**

18 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,  
19 Harbor Freight shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018)  
20 and use a warning with the capitalized and emboldened wording substantially similar to the  
21 following:

22 **WARNING:** This product can expose you to chemicals including Di (2-  
23 ethylhexyl) phthalate (DEHP), which is known to the State of  
24 California to cause cancer and birth defects or other reproductive  
harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

25 The warning shall be accompanied by a symbol consisting of a black exclamation point  
26 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not  
27 printed using the color yellow, the symbol may be printed in black and white. The symbol shall  
28

1 be placed to the left of the text of the warning, in a size no smaller than the height of the word  
2 “WARNING”.

3           **2.2.2** In addition to the warning text and transmission method set forth in section  
4 2.2.1, for Products that are not reformulated, Harbor Freight may comply with this judgment by  
5 using other warning text and transmission methods set forth in 27 Cal. Code Regs. § 25601, et  
6 seq., and amended subsequently thereafter, or other text or methods authorized or mandated by  
7 those regulations, or other State of California regulations or legislation pertaining to Proposition  
8 65 warnings related to such Products.

9           **2.2.3** Each unit shall carry said warning directly on each unit or its label or  
10 package, with such conspicuousness as compared with other words, statements or designs as to  
11 render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is  
12 sold by Harbor Freight on the internet shall also provide the warning message by a clearly  
13 marked hyperlink on the product display page, or otherwise prominently displayed to the  
14 purchaser before the purchaser completes his or her purchase of the Product. For Products that  
15 Harbor Freight provides for a downstream retailer to sell on the internet, Harbor Freight shall  
16 include an instruction that the retailer provide the warning message by a clearly marked  
17 hyperlink on the product display page, or otherwise prominently displayed to the purchaser  
18 before the purchaser completes his or her purchase of the Product.

### 19 **3. PAYMENTS**

#### 20 **3.1 Civil Penalty Pursuant To Proposition 65**

21 In settlement of all claims referred to in this Consent Judgment, Harbor Freight shall pay  
22 a total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with  
23 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of  
24 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
25 25% (\$750.00) for APS&EE.

26 Harbor Freight shall issue two (2) checks for the civil penalty: (1) a check or money order  
27 made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made  
28 payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Harbor Freight shall

1 remit the payments within five (5) business days of the Effective Date, to:

2 Lucas T. Novak, Esq.  
3 LAW OFFICES OF LUCAS T. NOVAK  
4 8335 W Sunset Blvd., Suite 217  
5 Los Angeles, CA 90069

### 6 **3.2 Reimbursement Of APS&EE's Fees And Costs**

7 Harbor Freight shall reimburse APS&EE's reasonable experts' and attorney's fees and  
8 costs incurred in prosecuting the instant action, for all work performed through execution of this  
9 Consent Judgment. Accordingly, Harbor Freight shall issue a check or money order made  
10 payable to "Law Offices of Lucas T. Novak" in the amount of twenty-three thousand dollars  
11 (\$23,000.00). Harbor Freight shall remit the payment within five (5) business days of the  
12 Effective Date, to:

13 Lucas T. Novak, Esq.  
14 LAW OFFICES OF LUCAS T. NOVAK  
15 8335 W Sunset Blvd., Suite 217  
16 Los Angeles, CA 90069

## 17 **4. RELEASES**

### 18 **4.1 APS&EE's Release Of Harbor Freight**

19 APS&EE, acting in its individual capacity, and in the public interest, in consideration of  
20 the promises and monetary payments contained herein, hereby releases Harbor Freight, its  
21 parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys,  
22 successors and assignees, as well as its downstream distributors, retailers, and franchisees  
23 (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in  
24 APS&EE's Notice or Complaint regarding the Products sold and/or offered for sale by Harbor  
25 Freight in California before and up to ninety days after the Effective Date.

### 26 **4.2 Harbor Freight's Release Of APS&EE**

27 Harbor Freight, its parents, subsidiaries, shareholders, directors, members, officers,  
28 employees, attorneys, successors and assignees, and on behalf of the Released Parties, by this  
Consent Judgment, waives all rights to institute any form of legal action against APS&EE, its  
shareholders, directors, members, officers, employees, attorneys, experts, successors and

1 assignees for actions or statements made or undertaken, whether in the course of investigating  
2 claims or seeking enforcement of Proposition 65 against Harbor Freight in this matter.

### 3 **4.3 Waiver Of Unknown Claims**

4 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil  
5 Code which provides as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
10 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
11 DEBTOR OR RELEASED PARTY.

12 Each of the Parties waives and relinquishes any right or benefit it has or may have under  
13 Section 1542 of California Civil Code or any similar provision under the statutory or non-  
14 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights  
15 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,  
16 or different from, those that it believes to be true with respect to the claims released herein. The  
17 Parties agree that this Consent Judgment and the releases contained herein shall be and remain  
18 effective in all respects notwithstanding the discovery of such additional or different facts.

### 17 **5. COURT APPROVAL**

18 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
19 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
20 Judgment is not effective until it is approved and entered by the Court. It is the intention of the  
21 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such  
22 approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
23 support the entry of this agreement in a timely manner, including cooperating on drafting and  
24 filing any papers in support of the required motion for judicial approval.

### 25 **6. SEVERABILITY**

26 Should any part or provision of this Consent Judgment for any reason be declared by a  
27 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue  
28 in full force and effect.

1   **7.   GOVERNING LAW**

2           The terms of this Consent Judgment shall be governed by the laws of the State of  
3   California.

4   **8.   NOTICES**

5           All correspondence and notice required to be provided under this Consent Judgment shall  
6   be in writing and delivered personally or sent by first class or certified mail addressed as follows:

7           **TO HARBOR FREIGHT:**

8           Bruce Nye, Esq.  
9           Scali Rasmussen  
10          1901 Harrison St., 14th Floor  
11          Oakland, CA 94612

**TO APS&EE:**

            Lucas Novak, Esq.  
            Law Offices of Lucas T. Novak  
            8335 W Sunset Blvd., Suite 217  
            Los Angeles, CA 90069

12   **9.   COUNTERPARTS**

13           This Consent Judgment may be executed in counterparts, each of which shall be deemed  
14   an original, and all of which, when taken together, shall constitute the same document. Execution  
15   and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
16   constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
17   Judgment shall have the same force and effect as the originals.

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1 **10. AUTHORIZATION**

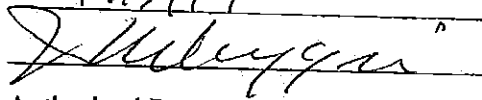
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions  
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
5 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
6 interfere with the execution or performance of this Consent Judgment by said Party.  
7

8 **AGREED TO:**

9 Date:

9/13/19

10 By:



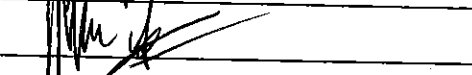
11 Authorized Representative of APS&EE, LLC

12  
13 **AGREED TO:**

14 Date:

4/17/19

15 By:



16 Authorized Representative of Harbor Freight Tools USA, Inc.  
17  
18

19 **IT IS SO ORDERED.**

20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
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